
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-02-CF-723
)	
JMK Communications, Inc.)	NAL/Acct. No. 200332340005
WTRI)	
Brunswick, Maryland)	FRN: 0006-1615-09

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: April 28, 2003

By the District Director, Columbia Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that JMK Communications, Inc. ("JMK") has apparently violated Sections 1.89, 73.49, and 73.1125(a) of the Commission's Rules¹ ("Rules") by failing to respond to Commission correspondence, failing to enclose their antenna in an effective locked fence, and failure to maintain a meaningful staff presence at the main studio. We conclude that JMK is apparently liable for forfeiture in the amount of eighteen thousand dollars (\$18,000).

II. BACKGROUND

2. On November 14, 2002, an agent from the Commission's Columbia Maryland office attempted an inspection of station WTRI, Brunswick, Maryland for compliance with FCC Rules. The agent found that the station had failed to maintain a meaningful staff presence at the main studio because it was locked and unmanned from 1:10 PM until the agent departed the studio address at 3:45 pm. The agent also observed that the station did not have one of the three antenna towers enclosed in an effective locked fence.

3. On November 22, 2002, the agent returned to the station. Again, the main studio was locked and unmanned. The agent found a note on the studio door directing visitors across the street to the residence of a station employee. The agent found the employee and completed an inspection. The employee identified himself as the chief engineer. The FCC agent found no management staff presence at the main studio.

4. On December 16, 2002, the Columbia Office issued a Notice of Violation ("NOV") to JMK for violation of Sections 11.15, 73.49, 73.1125(a), 73.1125(e), 73.3526(c) and 73.3526(e)(12) of the Rules². The NOV was mailed to the address of record. No reply was received to the NOV.

¹47 C.F.R. §§ 1.89, 73.49 and 73.1125(a).

²47 C.F.R. §§ 11.15, 73.1125(e), 73.3526(c) and 73.3526(e)(12).

5. On January 17, 2003, the Columbia Office issued a follow up letter to the NOV with a copy of the NOV attached. The letter was mailed to the address of record by certified mail with return receipt requested. The Columbia Office received a postal receipt proving delivery of the letter on January 25, 2003. The Office has not received a reply to the letter of January 17th.

III. DISCUSSION

5. Section 1.89 of the Rules specifies that the recipient shall send a written reply within ten days of receipt of an official notice to the Commission office originating the official notice. The Columbia Office has received no reply to the NOV or follow-up letter.

6. Section 73.49 of the Rules requires that antennas that have radio frequency potential (voltage) at the base of the tower are required to enclose the antenna in an effective locked fence to protect the public. On November 14, 2002 a Columbia Office agent photographed a large gap in the fence around on one of the station's towers where the fencing had pulled away from its supporting structure.

7. Section 73.1125(a) of the Rules requires that licensees maintain a main studio. In the Commission's *Memorandum Opinion and Order*³ on main studio rules released August 17, 1988, the Commission stated that "a station must equip the main studio with production and transmission facilities that meet applicable standards, maintain continuous program transmission capability, and maintain a meaningful management and staff presence." On November 14, 2002, a Columbia Office agent attempted to inspect the station during normal business hours and found the main studio locked and unmanned. Additionally, the FCC agent could not contact the station because it lacked a local or toll-free telephone number available to the public as required by Section 73.1125 (e) of the Rules. At the time of inspection on November 22, 2002, JMK had no management presence at the main studio, only maintenance staff.

8. Based on the evidence before us, we find that JMK willfully⁴ violated Sections 1.89, 73.49, and 73.1125(a) of the Rules by failing to respond to Commission correspondence, failing to enclose the antenna structure in an effective locked fence, and failing to have a meaningful staff and management presence at the main studio.

9. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")⁵, sets the base forfeiture amounts at \$4,000 for failure to reply to Commission correspondence, \$7,000 for failure to enclose the antenna in an effective locked fence, and \$7,000 for failure to have a meaningful management and staff presence at the main studio. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in

³ See *Memorandum Opinion and Order*, 3 FCC Rcd No. 17 (1988) at 5026.

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ 47 C.F.R. § 1.80.

Section 503(b)(2)(D) of the Communications Act of 1934 (“Act”), as amended,⁶ which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that an eighteen thousand dollar (\$18,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁷ and Sections 0.111, 0.311 and 1.80 of the Rules,⁸ JMK is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of eighteen thousand dollars (\$18,000) for willfully violating Sections 1.89, 73.49, and 73.1125(a) of the Rules.

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, JMK SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332340005, and FRN 0006-1615-09.

13. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200332340005.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111, and 0.311.

⁹ See 47 C.F.R. § 1.1914.

Federal Communications Commission

16. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Media Bureau. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

17. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt requested, to JMK Communications, Inc., 4525 Wilshire Boulevard, Los Angeles, California 90010.

FEDERAL COMMUNICATIONS COMMISSION

Charles C. Magin
District Director
Columbia Office

Attachment A – FCC List of Small Entities, October 2002